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BEFORE THE
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against: **NICHELLE MONIQUE ARANA** **12 Santa Clara** **San Clemente, CA 92672** **Registered Nurse License No. 571966** Respondent.	Case No. 2010 - 3616 **ACCUSATION**

Complainant alleges:

PARTIES

1. Louise R. Bailey, M.Ed., RN ("Complainant") brings this Accusation solely in her official capacity as the Interim Executive Officer of the Board of Registered Nursing ("Board"), Department of Consumer Affairs.

2. On or about September 15, 2000, the Board issued Registered Nurse License Number 571966 to Nichelle Monique Arana ("Respondent"). Respondent's registered nurse license was in full force and effect at all times relevant to the charges brought herein and will expire on October 31, 2011, unless renewed.

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STATUTORY AND REGULATORY PROVISIONS

3. Business and Professions Code ("Code") section 2750 provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

4. Code section 2764 provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license. Under Code section 2811, subdivision (b), the Board may renew an expired license at any time within eight years after the expiration.

5. Code section 2761 states, in pertinent part:

> The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:
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> (a) Unprofessional conduct, which includes, but is not limited to, the following:
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> (1) Incompetence, or gross negligence in carrying out usual certified or licensed nursing functions.
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> . . . .
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> (f) Conviction of a felony or of any offense substantially related to the qualifications, functions, and duties of a registered nurse, in which event the record of the conviction shall be conclusive evidence thereof . . .

6. Code section 2762 states, in pertinent part:

> In addition to other acts constituting unprofessional conduct within the meaning of this chapter [the Nursing Practice Act], it is unprofessional conduct for a person licensed under this chapter to do any of the following:
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> (a) Obtain or possess in violation of law, or prescribe, or except as directed by a licensed physician and surgeon, dentist, or podiatrist administer to himself or herself, or furnish or administer to another, any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code or any dangerous drug or dangerous device as defined in Section 4022.
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> (b) Use any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code, or any dangerous drug or dangerous device as defined in Section 4022, or alcoholic beverages, to an extent or in a manner dangerous or injurious to himself or herself, any other person, or the public or to the extent that such use impairs his or her ability to conduct with safety to the public the practice authorized by his or her license.

. . . .

(e) Falsify, or make grossly incorrect, grossly inconsistent, or unintelligible entries in any hospital, patient, or other record pertaining to the substances described in subdivision (a) of this section.

7. Code section 2765 states:

A plea or verdict of guilty or a conviction following a plea of nolo contendere made to a charge substantially related to the qualifications, functions and duties of a registered nurse is deemed to be a conviction within the meaning of this article. The board may order the license or certificate suspended or revoked, or may decline to issue a license or certificate, when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code allowing such person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information or indictment.

8. Code section 482 states:

Each board under the provisions of this code shall develop criteria to evaluate the rehabilitation of a person when:

(a) Considering the denial of a license by the board under Section 480; or

(b) Considering suspension or revocation of a license under Section 490.

Each board shall take into account all competent evidence of rehabilitation furnished by the applicant or licensee.

9. Code section 490, subdivision (a), states:

In addition to any other action that a board is permitted to take against a licensee, a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

10. Section 493 of the Code states, in pertinent part:

Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact, and the board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, and duties of the licensee in question.

11. Code section 4022 states:

"Dangerous drug" or "dangerous device" means any drug or device unsafe for self-use in humans or animals, and includes the following:

(a) Any drug that bears the legend: "Caution: federal law prohibits dispensing without prescription," "Rx only," or words of similar import.

(b) Any device that bears the statement: "Caution: federal law restricts this device to sale by or on the order of a --------," "Rx only," or words of similar import, the blank to be filled in with the designation of the practitioner licensed to use or order use of the device.

(c) Any other drug or device that by federal or state law can be lawfully dispensed only on prescription or furnished pursuant to Section 4006.

12. Code section 4060 states, in pertinent part:

No person shall possess any controlled substance, except that furnished to a person upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified nurse-midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, a physician assistant pursuant to Section 3502.1, a naturopathic doctor pursuant to Section 3640.5, or a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052 . . .

13. Health and Safety Code section 11170 states that no person shall prescribe, administer, or furnish a controlled substance for himself.

14. Health and Safety Code section 11173, subdivision (a), states, in pertinent part, that "[n]o person shall obtain or attempt to obtain controlled substances, or procure or attempt to procure the administration of or prescription for controlled substances, (1) by fraud, deceit, misrepresentation, or subterfuge . . ."

15. California Code of Regulations, title 16, section ("Regulation") 1442 states:

As used in Section 2761 of the code, 'gross negligence' includes an extreme departure from the standard of care which, under similar circumstances, would have ordinarily been exercised by a competent registered nurse. Such an extreme departure means the repeated failure to provide nursing care as required or failure to provide care or to exercise ordinary precaution in a single situation which the nurse knew, or should have known, could have jeopardized the client's health or life.

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16. Regulation 1444, states, in pertinent part:

A conviction or act shall be considered to be substantially related to the qualifications, functions or duties of a registered nurse if to a substantial degree it evidences the present or potential unfitness of a registered nurse to practice in a manner consistent with the public health, safety, or welfare. Such convictions or acts shall include but not be limited to the following:

(a) Assaultive or abusive conduct including, but not limited to, those violations listed in subdivision (d) of Penal Code Section 11160.

. . . .

(c) Theft, dishonesty, fraud, or deceit . . .

17. Regulation 1445, states in part pertinent:

. . .

(b) When considering the suspension or revocation of a license on the grounds that a registered nurse has been convicted of a crime, the board, in evaluating the rehabilitation of such person and his/her eligibility for a license will consider the following criteria:

(1) Nature and severity of the act(s) or offense(s).
(2) Total criminal record.
(3) The time that has elapsed since commission of the act(s) or offense(s).
(4) Whether the licensee has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against the licensee.
(5) If applicable, evidence of expungement proceedings pursuant to Section 1203.4 of the Penal Code.
(6) Evidence, if any, of rehabilitation submitted by the licensee.

COST RECOVERY

18. Code section 125.3 provides, in pertinent part, that the Board may request the administrative law judge to direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

CONTROLLED SUBSTANCES/DANGEROUS DRUGS AT ISSUE

19. "Soma," a brand of carisoprodol, is a dangerous drug within the meaning of Business and Professions Code section 4022 in that it requires a prescription under federal law.

20. "Dilaudid", a brand of hydromorphone, is a Schedule II controlled substance as designated by Health and Safety Code section 11055, subdivision (b)(1)(K).

21. "Darvocet", a brand of propoxyphene napsylate, is a Schedule IV controlled substance as designated by Health and Safety Code section 11057, subdivision (c)(2).

FIRST CAUSE FOR DISCIPLINE

(2002 and 2003 Criminal Convictions)

22. Respondent is subject to disciplinary action pursuant to Code sections 2761, subdivision (f), and 490, subdivision (a), in that Respondent was convicted of crimes which are substantially related to the qualifications, functions, and duties of a registered nurse, as follows:

a. On or about June 26, 2002, in the criminal proceeding titled *People v. Nichelle Monique Arana* (Super. Ct. Riverside County, 2002, Case No. INM125756), Respondent pled guilty to violating Penal Code section 148.9, subdivision (a) (providing false identification to a peace officer, a misdemeanor). Respondent was placed on summary probation for 12 months on terms and conditions, including that Respondent obey all laws and ordinances. The circumstances of the crime are as follows: In or about May or June 2002, while Respondent was in Palm Springs with her boyfriend, they got into a fight in their hotel room. Officers with the Palm Springs Police Department came out to the scene after receiving a report of a disturbance. When the officers asked Respondent for her identification, she gave them a false name and birth date.

b. On or about July 3, 2003, in the criminal proceeding titled *People v. Nichelle Monique Arana* (Super. Ct. Orange County, 2003, Case No. 03WM00981), Respondent pled guilty to violating Penal Code section 415 (disturbing the peace, a misdemeanor). Respondent was also charged with violating Penal Code sections 240 (assault) and 242 (battery); however, those charges were dismissed in view of Respondent's plea, as set forth above. The circumstances of the crime are as follows: On or about August 24, 2002, while on criminal probation for the offense described in subparagraph (a) above, Respondent and her boyfriend were involved in a physical altercation with another couple while at a bar.

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SECOND CAUSE FOR DISCIPLINE

(Self-Administration of a Dangerous Drug)

23. Respondent is subject to disciplinary action pursuant to Code section 2761, subdivision (a), on the grounds of unprofessional conduct, as defined by Code section 2762, subdivision (a), in that Respondent self-administered the dangerous drug Soma without lawful authority therefore, as follows: On or about July 3, 2003, Respondent took an unknown quantity of Soma that she had purchased from some friends to "get high" (Respondent did not have a prescription for Soma), and drove her vehicle while under the influence of the drug. Later, as Respondent was exiting the freeway in her vehicle, she hit a fence.

THIRD CAUSE FOR DISCIPLINE

(Use of Dangerous Drugs to an Extent or in a Manner Dangerous or Injurious to Oneself and/or Others)

24. Respondent is subject to disciplinary action pursuant to Code section 2761, subdivision (a), on the grounds of unprofessional conduct, as defined by Code section 2762, subdivision (b), in that on or about on July 3, 2003, Respondent used the dangerous drug Soma to an extent or in a manner dangerous or injurious to herself and others, as set forth above.

SADDLEBACK MEMORIAL HOSPITAL

FOURTH CAUSE FOR DISCIPLINE

(Diversion, Possession, and Self-Administration of Controlled Substances)

25. Respondent is subject to disciplinary action pursuant to Code section 2761, subdivision (a), on the grounds of unprofessional conduct, as defined by Code section 2762, subdivision (a), in that in or about February 2004, while on duty as a registered nurse at Saddleback Memorial Hospital, Laguna Hills, California, Respondent did the following:

Diversion of Controlled Substances:

a. Respondent obtained the controlled substance Dilaudid by fraud, deceit, misrepresentation, or subterfuge, in violation of Health and Safety Code section 11173, subdivision (a), as follows: In or about February 2004, Respondent removed various quantities of Dilaudid from the Pyxis medication dispensing system ("Pyxis") that was designated for certain

patients (patients A through C), then injected the Dilaudid while she was on duty or took the medication home for self-administration, as set forth in paragraph 23 below. Further, Respondent failed to chart the administration of the Dilaudid in the patients' 7 Day Medications Summary, failed to document the wastage of the Dilaudid in the Pyxis, or falsified or made grossly incorrect, grossly inconsistent, or unintelligible entries in the hospital's records to conceal her diversion of the controlled substance, as set forth in paragraph 27 below.

Possession of Controlled Substances:

b. In or about February 2004, Respondent possessed unknown quantities of the controlled substance Dilaudid without a valid prescription from a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor, in violation of Code section 4060.

Self-Administration of Controlled Substances:

c. In or about February 2004, Respondent self-administered unknown quantities of the controlled substance Dilaudid without lawful authority therefore, as set forth in paragraph 26 below.

FIFTH CAUSE FOR DISCIPLINE

(Use of Controlled Substances to an Extent or in a Manner Dangerous or Injurious to Oneself and/or Others)

26. Respondent is subject to disciplinary action pursuant to Code section 2761, subdivision (a), on the grounds of unprofessional conduct, as defined by Code section 2762, subdivision (b), in that in or about February 2004, while on duty as a registered nurse at Saddleback Memorial Hospital, Laguna Hills, California, Respondent used the controlled substance Dilaudid to an extent or in a manner dangerous or injurious to herself and others or to the extent that such use impaired her ability to conduct her nursing duties safely, as follows: Respondent took Dilaudid that was designated for certain patients and injected it in the hospital bathroom or took it home for self-administration later. Further, Respondent, by her own admission, self-injected the Dilaudid while providing patient care and was not "clear minded" when performing her nursing duties.

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SIXTH CAUSE FOR DISCIPLINE

(False Entries in Hospital/Patient Records)

27. Respondent is subject to disciplinary action pursuant to Code section 2761, subdivision (a), on the grounds of unprofessional conduct, as defined by Code section 2762, subdivision (e), in that in or about February 2004, while on duty as a registered nurse at Saddleback Memorial Hospital, Laguna Hills, California, Respondent falsified, or made grossly incorrect, grossly inconsistent, or unintelligible entries in hospital, patient, or other records pertaining to the controlled substance Dilaudid, as follows:

Patient A:

a. On February 9, 2004, at 22:53 hours, Respondent removed Dilaudid 2 mg from the Pyxis for the patient, but failed to chart the administration of the Dilaudid on the patient's 7 Day Medications Summary (hereinafter "Medications Summary"), document the wastage of the Dilaudid in the Pyxis, and otherwise account for the disposition of the Dilaudid 2 mg.

b. On February 10, 2004, at 02:47 hours, Respondent removed Dilaudid 2 mg from the Pyxis for the patient, but failed to chart the administration of the Dilaudid on the patient's Medications Summary, document the wastage of the Dilaudid in the Pyxis, and otherwise account for the disposition of the Dilaudid 2 mg.

c. On February 10, 2004, at 04:54 hours, Respondent removed Dilaudid 2 mg from the Pyxis for the patient, charted on the patient's Critical Care Patient Progress Record that she administered .5 to 1 mg of Dilaudid to the patient at 0500 hours, but failed to chart the administration of the Dilaudid on the patient's Medications Summary, failed to document the wastage of any portion of the Dilaudid in the Pyxis, and/or otherwise account for the disposition of the Dilaudid 2 mg.

d. On February 10, 2004, at 07:50 hours, Respondent removed Dilaudid 2 mg from the Pyxis for the patient, but failed to chart the administration of the Dilaudid on the patient's Medications Summary, document the wastage of the Dilaudid in the Pyxis, and otherwise account for the disposition of the Dilaudid 2 mg.

e. On February 10, 2004, at 20:05 hours, Respondent removed Dilaudid 2 mg from the Pyxis for the patient, but failed to chart the administration of the Dilaudid on the patient's Medications Summary, document the wastage of the Dilaudid in the Pyxis, and otherwise account for the disposition of the Dilaudid 2 mg.

f. On February 11, 2004, at 02:35 hours, Respondent removed Dilaudid 2 mg from the Pyxis for the patient, but failed to chart the administration of the Dilaudid on the patient's Medications Summary, document the wastage of the Dilaudid in the Pyxis, and otherwise account for the disposition of the Dilaudid 2 mg.

g. On February 11, 2004, at 05:03 hours, Respondent removed Dilaudid 2 mg from the Pyxis for the patient, but failed to chart the administration of the Dilaudid on the patient's Medications Summary, document the wastage of the Dilaudid in the Pyxis, and otherwise account for the disposition of the Dilaudid 2 mg.

h. On February 11, 2004, at 07:44 hours, Respondent removed Dilaudid 2 mg from the Pyxis for the patient, but failed to chart the administration of the Dilaudid on the patient's Medications Summary, document the wastage of the Dilaudid in the Pyxis, and otherwise account for the disposition of the Dilaudid 2 mg.

Patient B:

i. On February 20, 2004, at 22:37 hours, Respondent removed Dilaudid 2 mg from the Pyxis for the patient, but failed to chart the administration of the Dilaudid on the patient's Medications Summary, document the wastage of the Dilaudid in the Pyxis, and otherwise account for the disposition of the Dilaudid 2 mg.

j. On February 21, 2004, at 01:29 hours, Respondent removed Dilaudid 2 mg from the Pyxis for the patient, but failed to chart the administration of the Dilaudid on the patient's Medications Summary, document the wastage of the Dilaudid in the Pyxis, and otherwise account for the disposition of the Dilaudid 2 mg.

k. On February 21, 2004, at 03:51 hours, Respondent removed Dilaudid 2 mg from the Pyxis for the patient, but failed to chart the administration of the Dilaudid on the patient's

Medications Summary, document the wastage of the Dilaudid in the Pyxis, and otherwise account for the disposition of the Dilaudid 2 mg.

l. On February 21, 2004, at 06:59 hours, Respondent removed Dilaudid 2 mg from the Pyxis for the patient, but failed to chart the administration of the Dilaudid on the patient's Medications Summary, document the wastage of the Dilaudid in the Pyxis, and otherwise account for the disposition of the Dilaudid 2 mg.

m. On February 21, 2004, at 20:29 hours, Respondent removed Dilaudid 2 mg from the Pyxis for the patient, but failed to chart the administration of the Dilaudid on the patient's Medications Summary, document the wastage of the Dilaudid in the Pyxis, and otherwise account for the disposition of the Dilaudid 2 mg.

n. On February 22, 2004, at 04:49 hours, Respondent removed Dilaudid 2 mg from the Pyxis for the patient, but failed to chart the administration of the Dilaudid on the patient's Medications Summary, document the wastage of the Dilaudid in the Pyxis, and otherwise account for the disposition of the Dilaudid 2 mg.

o. On February 22, 2004, at 20:54 hours, Respondent removed Dilaudid 2 mg from the Pyxis for the patient, but failed to chart the administration of the Dilaudid on the patient's Medications Summary, document the wastage of the Dilaudid in the Pyxis, and otherwise account for the disposition of the Dilaudid 2 mg.

p. On February 23, 2004, at 01:26 hours, Respondent removed Dilaudid 2 mg from the Pyxis for the patient, but failed to chart the administration of the Dilaudid on the patient's Medications Summary, document the wastage of the Dilaudid in the Pyxis, and otherwise account for the disposition of the Dilaudid 2 mg.

q. On February 23, 2004, at 06:36 hours, Respondent removed Dilaudid 2 mg from the Pyxis for the patient, but failed to chart the administration of the Dilaudid on the patient's Medications Summary, document the wastage of the Dilaudid in the Pyxis, and otherwise account for the disposition of the Dilaudid 2 mg.

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Patient C:

r. On February 25, 2004, at 09:31 hours, Respondent removed Dilaudid 2 mg from the Pyxis for the patient, but failed to chart the administration of the Dilaudid on the patient's Medications Summary, document the wastage of the Dilaudid in the Pyxis, and otherwise account for the disposition of the Dilaudid 2 mg.

s. On February 25, 2004, at 11:24 hours, Respondent removed Dilaudid 2 mg from the Pyxis for the patient, but failed to chart the administration of the Dilaudid on the patient's Medications Summary, document the wastage of the Dilaudid in the Pyxis, and otherwise account for the disposition of the Dilaudid 2 mg.

t. On February 25, 2004, at 14:15 hours, Respondent removed Dilaudid 2 mg from the Pyxis for the patient, but failed to chart the administration of the Dilaudid on the patient's Medications Summary, document the wastage of the Dilaudid in the Pyxis, and otherwise account for the disposition of the Dilaudid 2 mg.

u. On February 25, 2004, at 16:28 hours, Respondent removed Dilaudid 2 mg from the Pyxis for the patient, but failed to chart the administration of the Dilaudid on the patient's Medications Summary, document the wastage of the Dilaudid in the Pyxis, and otherwise account for the disposition of the Dilaudid 2 mg.

v. On February 25, 2004, at 18:23 hours, Respondent removed Dilaudid 2 mg from the Pyxis for the patient, but failed to chart the administration of the Dilaudid on the patient's Medications Summary, document the wastage of the Dilaudid in the Pyxis, and otherwise account for the disposition of the Dilaudid 2 mg. Further, Respondent charted on the patient's Critical Care Patient Progress Record that she administered Dilaudid to the patient at 1800 hours, but failed to indicate the dosage administered.

CHAPMAN MEDICAL CENTER

SEVENTH CAUSE FOR DISCIPLINE

(Diversion, Possession, and Self-Administration of Controlled Substances)

28. Respondent is subject to disciplinary action pursuant to Code section 2761, subdivision (a), on the grounds of unprofessional conduct, as defined by Code section 2762,

subdivision (a), in that in or about July 2004 and August 2004, while on duty as a registered nurse in the Emergency Department ("ED") at Chapman Medical Center, Orange, California, Respondent did the following:

Diversion of Controlled Substances:

a. Respondent obtained the controlled substance Dilaudid by fraud, deceit, misrepresentation, or subterfuge, in violation of Health and Safety Code section 11173, subdivision (a), as follows: In or about July 2004 and August 2004, Respondent removed various quantities of Dilaudid from the hospital supply for certain patients when there were no physicians' orders authorizing the medication for the patients, or the quantities of the medication removed were in excess of the doses ordered by the patients' physicians. Further, Respondent failed to chart the administration of the Dilaudid on the ED Patient Care Records or falsified or made grossly incorrect, grossly inconsistent, or unintelligible entries in the ED Patient Care Records to conceal her diversion of the Dilaudid, as set forth in paragraph 26 below.

Possession of Controlled Substances:

b. In or about July 2004 and August 2004, Respondent possessed unknown quantities of the controlled substance Dilaudid without a valid prescription from a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor, in violation of Code section 4060.

Self-Administration of Controlled Substances:

c. In or about July 2004 and August 2004, Respondent self-administered unknown quantities of the controlled substance Dilaudid without lawful authority therefore.

EIGHTH CAUSE FOR DISCIPLINE

(False Entries in Hospital/Patient Records)

29. Respondent is subject to disciplinary action pursuant to Code section 2761, subdivision (a), on the grounds of unprofessional conduct, as defined by Code section 2762, subdivision (e), in that in or about July 2004 and August 2004, while on duty as a registered nurse at Chapman Medical Center, Orange, California, Respondent falsified, or made grossly incorrect, grossly inconsistent, or unintelligible entries in hospital, patient, or other records pertaining to the controlled substance Dilaudid, as follows:

Patient D:

a. On July 19, 2004, at 1030 hours, Respondent signed out on the Controlled Substance Administration Record ("CSAR") Dilaudid 2 mg for the patient when, in fact, there was no physician's order authorizing the medication for the patient at that time.[1] Further, Respondent failed to chart the administration of the Dilaudid on the patient's ED Patient Care Record and otherwise account for the disposition of the Dilaudid 2 mg. In addition, the patient was not admitted to the ED until *1035* hours.

Patient E:

b. On July 29, 2004, at 1440, 1500, 1520, 1600, and 1747 hours, Respondent signed out on the CSAR Dilaudid 2 mg for the patient at each time interval for a total of five doses of the medication. In fact, the physician's order called for the administration of only two doses of Dilaudid 2 mg. Further, Respondent failed to chart the administration of the Dilaudid 2 mg that she signed out at 1747 hours on the patient's ED Patient Care Record and otherwise account for the disposition of the Dilaudid 2 mg.

Patient F:

c. On July 25, 2004, at 1715 hours, Respondent signed out on the CSAR Dilaudid 2 mg for the patient when, in fact, there was no physician's order authorizing the medication for the patient. Further, Respondent failed to chart the administration of the Dilaudid on the patient's ED Patient Care Record and otherwise account for the disposition of the Dilaudid 2 mg.

Patient G:

d. On August 3, 2004, Respondent charted on the patient's ED Patient Care Record that she administered Dilaudid 1 mg to the patient at 1125 hours (as ordered by the patient's physician), but documented on the CSAR that she removed the Dilaudid from the hospital supply at *1400 hours.*

e. On August 3, 2004, Respondent charted on the patient's ED Patient Care Record that she administered Dilaudid 1 mg to the patient at 1205 hours (as ordered by the patient's

[1] The patient's physician issued an order for Dilaudid 1 mg by IV push at *1140 hours.*

physician), but documented on the CSAR that she removed the Dilaudid from the hospital supply at *1400 hours.*

f. On August 3, 2004, Respondent charted on the patient's ED Patient Care Record that she administered Dilaudid 1 mg to the patient at 1235 hours (as ordered by the patient's physician), but documented on the CSAR that she removed the Dilaudid from the hospital supply at *1400 hours.*

g. On August 3, 2004, at 1450 hours, Respondent signed out on the CSAR Dilaudid 1 mg for the patient when, in fact, there was no physician's order authorizing the medication for the patient. Further, Respondent failed to chart the administration of the Dilaudid on the patient's ED Patient Care Record and otherwise account for the disposition of the Dilaudid 1 mg.

SOUTH COAST MEDICAL CENTER

NINTH CAUSE FOR DISCIPLINE

(Diversion and Possession of Controlled Substances)

30. Respondent is subject to disciplinary action pursuant to Code section 2761, subdivision (a), on the grounds of unprofessional conduct, as defined by Code section 2762, subdivision (a), in that in or about September 2006 and November 2006, while on duty as a registered nurse in the Medical-Surgical Unit at South Coast Medical Center, Laguna Beach, California, Respondent did the following:

Diversion of Controlled Substances:

a. Respondent obtained the controlled substances Dilaudid and Darvocet by fraud, deceit, misrepresentation, or subterfuge, in violation of Health and Safety Code section 11173, subdivision (a), as follows: In or about September 2006 and November 2006, Respondent removed various doses of Dilaudid and Darvocet from the Omnicell Automated Drug Dispensing System (hereinafter "Omnicell") for certain patients in quantities that were in excess of the doses ordered by the patients' physicians. Further, Respondent failed to chart the administration of the Dilaudid and Darvocet on the patients' Medication Administration Records ("MAR"), failed to

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chart the wastage of the Dilaudid and Darvocet in the Omnicell, or falsified or made grossly incorrect, grossly inconsistent, or unintelligible entries in the MAR's to conceal her diversion of the Dilaudid and Darvocet, as set forth in paragraph 31 below.

Possession of Controlled Substances:

b. In or about September 2006 and November 2006, Respondent possessed unknown quantities of the controlled substances Dilaudid and Darvocet without valid prescriptions from a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor, in violation of Code section 4060.

TENTH CAUSE FOR DISCIPLINE

(False Entries in Hospital/Patient Records)

31. Respondent is subject to disciplinary action pursuant to Code section 2761, subdivision (a), on the grounds of unprofessional conduct, as defined by Code section 2762, subdivision (e), in that in or about September 2006 and November 2006, while on duty as a registered nurse in the Medical-Surgical Unit at South Coast Medical Center, Laguna Beach, California, Respondent falsified, or made grossly incorrect, grossly inconsistent, or unintelligible entries in hospital, patient, or other records pertaining to the controlled substances Dilaudid and Darvocet, as follows:

Patient A:

a. On September 30, 2006, at 0830 hours, Respondent removed Dilaudid 2 mg from the Omnicell for the patient, charted on the patient's MAR that she administered Dilaudid 1 mg to the patient at 0820 hours, but failed to document the wastage of the remaining 1 mg of Dilaudid in the Omnicell and otherwise account for the disposition of the Dilaudid 1 mg.

b. On September 30, 2006, at 1200 hours, Respondent removed Dilaudid 2 mg from the Omnicell for the patient, charted on the patient's MAR that she administered Dilaudid 1 mg to the patient at 1150 hours, but failed to document the wastage of the remaining 1 mg of Dilaudid in the Omnicell and otherwise account for the disposition of the Dilaudid 1 mg.

c. On September 30, 2006, at 1714 hours, Respondent removed Dilaudid 2 mg from the Omnicell for the patient, charted on the patient's MAR that she administered Dilaudid .5 mg to

the patient at 1715 hours, but failed to document the wastage of the remaining 1.5 mg of Dilaudid in the Omnicell and otherwise account for the disposition of the Dilaudid 1.5 mg.

Patient B:

d. On September 30, 2006, between 1415 and 1519 hours, Respondent removed a total of two tablets of Darvocet 100 mg from the Omnicell for the patient when, in fact, the physician's order called for the administration of one tablet of the medication *every four hours* as needed for mild to moderate pain. Further, Respondent failed to chart the administration of the Darvocet in the patient's MAR, document the wastage of the Darvocet in the Omnicell, and otherwise account for the disposition of the two tablets of Darvocet 100 mg.

Patient D:

e. On November 11, 2006, at 1916 hours, Respondent removed Dilaudid 4 mg from the Omnicell for the patient when, in fact, the physician's order called for the administration of only 2 mg of Dilaudid to the patient. Further, Respondent charted on the patient's MAR that she administered Dilaudid 2 mg to the patient at 1810 hours and another 2 mg of the medication at 1925 hours, when, in fact, the physician's order called for the administration of the Dilaudid every *four hours* as needed for pain. In addition, Respondent charted on the patient's Pain Management PRN Medication Record ("PRN Med Record") that she administered Dilaudid 2 mg to the patient at 1810 hours, but failed to chart the administration of the second dose of Dilaudid; i.e., the dose that was documented in the MAR as administered at 1925 hours and/or otherwise account for the disposition of the Dilaudid 2 mg.

Patient G:

f. On November 7, 2006, at 1856 hours, Respondent removed Dilaudid 4 mg from the Omnicell for the patient when, in fact, the physician's order called for the administration of only 2 mg of the medication to the patient. Further, Respondent charted on the patient's MAR that she administered Dilaudid 2 mg to the patient at 1840 hours, but failed to document the wastage of the remaining 2 mg of Dilaudid in the Omnicell and otherwise account for the disposition of the Dilaudid 2 mg.

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Patient H:

g. On November 7, 2006, at 0825 hours, Respondent removed Dilaudid 2 mg from the Omnicell for the patient, charted on the patient's MAR that she administered Dilaudid 1 mg to the patient at 0820 hours, but failed to document the wastage of the remaining 1 mg of Dilaudid in the Omnicell and otherwise account for the disposition of the Dilaudid 1 mg.

h. On November 7, 2006, at 1632 hours, Respondent removed Dilaudid 4 mg from the Omnicell for the patient when, in fact, the physician's order called for the administration of only 1 mg of the medication to the patient. Further, Respondent charted on the patient's MAR that she administered Dilaudid 1 mg to the patient at 1630 hours, but charted on the patient's PRN Med Record that she administered 0.5 mg of Dilaudid to the patient. In addition, Respondent failed to document the wastage of any portion of the Dilaudid in the Omnicell and otherwise account for the disposition of the Dilaudid 3.5 mg.

Patient K:

i. On November 11, 2006, at 1130 hours, Respondent charted on the patient's MAR that she administered Dilaudid to the patient, but failed to document the dosage administered. Further, Respondent did not remove any Dilaudid from the Omnicell until 1336 hours, as set forth in subparagraph (j) below.

j. On November 11, 1006, at 1336 hours, Respondent removed Dilaudid 4 mg from the Omnicell for the patient when, in fact, the physician's order called for the administration of only 1 to 2 mg of the medication to the patient. Further, at 1330 hours, Respondent charted on the patient's MAR that she administered Dilaudid to the patient, but failed to document the dosage administered, and failed to document the wastage of any portion of the Dilaudid in the Omnicell and otherwise account for the disposition of the Dilaudid 4 mg.

k. On November 11, 2006, at 1646 hours, Respondent removed Dilaudid 2 mg from the Omnicell for the patient, charted on the patient's MAR that she administered Dilaudid to the patient at 1640 hours, but failed to document the dosage administered, and failed to document the wastage of any portion of the Dilaudid in the Omnicell and otherwise account for the disposition of the Dilaudid 2 mg.

ELEVENTH CAUSE FOR DISCIPLINE

(Gross Negligence)

32. Respondent is subject to disciplinary action pursuant to Code section 2761, subdivision (a)(1), on the grounds of unprofessional conduct, in that in or about September 2006 and November 2006, while on duty as a registered nurse in the Medical-Surgical Unit at South Coast Medical Center, Laguna Beach, California, Respondent was guilty of gross negligence within the meaning of Regulation 1442, as set forth in paragraphs 30 and 31 above.

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

1. Revoking or suspending Registered Nurse License Number 571966, issued to Nichelle Monique Arana;

2. Ordering Nichelle Monique Arana to pay the Board of Registered Nursing the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

3. Taking such other and further action as deemed necessary and proper.

DATED: 2/3/10

Louise R. Bailey

LOUISE R. BAILEY, M.ED., RN
Interim Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

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